COMMISSION REGULATION (EC) No 342/2006

of 24 February 2006

initiating a 'new exporter' review of Council Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of synthetic staple fibres of polyesters originating, *inter alia*, in the People's Republic of China, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation) [1], and in particular Article 11(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. REQUEST FOR A REVIEW

(1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by Huvis Sichuan ('the applicant'), an exporting producer in the People's Republic of China (the country concerned).

B. PRODUCT

(2) The product under review is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the People's Republic of China (the product concerned), currently classifiable within CN code 5503 20 00. This CN code is given only for information.

C. EXISTING MEASURES

(3) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 428/2005 [2] under which imports into the Community of the product concerned originating in the People's Republic of China, and produced by the applicant, are subject to a definitive anti-dumping duty of 49,7 % with the exception of companies specially mentioned which are subject to individual duty rates.

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claims individual treatment in conformity with Article 9(5) of the basic Regulation, that it did not export the product concerned to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 January 2003 to 31 December 2003 (the original investigation period) and that it is not related to any of the exporting producers of the product which are subject to the above mentioned anti-dumping measures.

(5) The applicant further alleges that it has begun exporting the product concerned to the Community after the end of the original investigation period.

E. PROCEDURE

(6) Community producers known to be concerned have been informed of the above application and have been given and opportunity to comment. No comments have been received.

(7) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the basic Regulation, with a view to determine whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively whether the applicant fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation and, if so, the applicant's individual margin of dumping and, should dumping be found, the level of the duty to which its imports of the product concerned into the Community should be subject.

(8) If it is determined that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product concerned from companies not mentioned in Article 1(2) of Regulation (EC) No 428/2005.

(a) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the applicant.

(b) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] OJ L 71, 17.3.2005, p. 1. Regulation as amended by Regulation (EC) No 1333/2005 (OJ L 211, 13.8.2005, p. 1).

Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

Attention is drawn to the fact that the exercise of most procedural rights set out in the Regulation (EC) No 384/96 depends on the party's making itself known within the period provided for by the present Regulation.

(c) **Selection of the market economy country**

In the event that the applicant is not granted market economy status but fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation, an appropriate market economy country will be used for the purpose of establishing normal value in respect of the People's Republic of China in accordance with Article 2(7)(a) of the basic Regulation. The Commission envisages using the United States of America again for this purpose as was done in the investigation which led to the imposition of measures on imports of the product concerned from the People's Republic of China. Interested parties are hereby invited to comment on the appropriateness of this choice within the specific time limit set in Article 4(2) of this Regulation.

Furthermore, in the event that the applicant is granted market economy status, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the People's Republic of China which are needed in establishing the normal value, if reliable required data are not available in the People's Republic of China. The Commission envisages using the United States of America also for this purpose.

(d) **Market economy status**

In the event that the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, duly substantiated claims must be submitted within the specific time limit set in Article 4(3) of this Regulation. The Commission will send claim forms to the applicant as well as to the authorities of the People's Republic of China.

F. **REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS**

(9) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duty in force shall be repealed with regard to imports of the product concerned which are produced and sold for export to the Community by the applicant. At the same time, such imports shall be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicant, anti-dumping duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

G. **TIME LIMITS**

(10) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in Article 4(1) of this Regulation or provide any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission,

— interested parties to the investigation can comment on the appropriateness of the United States of America which, in the event that the applicant will not be granted market economy status, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China,

— the applicant can submit a duly substantiated claim for market economy status.

H. **NON-COOPERATION**

(11) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(12) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated,

HAS ADOPTED THIS REGULATION:

Article 1

A review of Regulation (EC) No 428/2005 is hereby initiated pursuant to Article 11(4) of Regulation (EC) No 384/96 in order to determine if and to what extent the imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning falling within CN code 5503 20 00 originating in the People's Republic of China, produced by Huvis Sichuan (TARIC additional code A736) and sold for export to the Community should be subject to the anti-dumping duty imposed by Council Regulation (EC) No 428/2005.

Article 2

The anti-dumping duty imposed by Regulation (EC) No 428/2005 is hereby repealed with regard to the imports identified in Article 1.

Article 3

The customs authorities of the Member States are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports identified in Article 1. Registration shall expire nine months following the date of entry into force of the present Regulation.

Article 4

1. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in recital 8(a) of this Regulation or any other information, unless otherwise specified, within 40 days of the entry into force of this Regulation.

Interested parties may also apply in writing to be heard by the Commission within the same 40-day time limit.

2. Parties to the investigation may wish to comment on the appropriateness of the United States of America, which is envisaged as a market-economy third country for the purpose of establishing normal value in respect of the People's Republic of China, must submit their comments within 10 days of the date of entry into force of this Regulation.

3. Duly substantiated claims for marked economy status must reach the Commission within 21 days of the date of the entry into force of this Regulation.

4. All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' [1] and, in accordance with Article 19(2) of Regulation (EC) No 384/96, shall be accompanied by a non-confidential version, which will be labelled 'FOR INSPECTION BY INTERESTED PARTIES'.

Any information relating to the matter and/or any request for a hearing should be sent to the following address:

European Commission
Directorate-General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32 2) 295 65 05.

Article 5

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 February 2006.

For the Commission
Peter MANDELSON
Member of the Commission

[1] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Regulation (EC) No 384/96 and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).